

In the United States District Court
For the District of Puerto Rico

The United States of America,

Plaintiff

v.

José M. Mulero-Rivera,

Defendant.

Cr. No.: 17-503 (CCC)

Sentencing Memorandum

TO THE HONORABLE CARMEN C. CEREZO
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

I. Procedural Background

On August 24, 2017, José M. Mulero-Rivera (hereinafter “Mr. Mulero-Rivera”) was charged with a one (1) count indictment for illegal possession of a machinegun, an offense which carries a maximum imprisonment term of 10 years.¹ On April 16, 2018, Mr. Mulero-Rivera pled guilty pursuant to a *straight plea*. The sentencing hearing is set for July 17, 2018, before this Honorable Court. For the following information, Mr. Mulero-Rivera respectfully requests this Honorable Court to sentence him to the lower end of the applicable Guidelines range for a sentence of *18 months of imprisonment*, followed by a supervised release term of three (3) years.

¹ 18 U.S.C. § 922(o) & 924(a)(2).

II. *Mr. Mulero-Rivera's history and personal characteristics*

Mr. Mulero-Rivera is a 23-year-old young man with no prior convictions and no controlled substance use. On August 28, 2017, he yielded negative results to all drugs tested. Mr. Mulero-Rivera worked for over five (5) years at *Perfect Shine Carwash* and did yard and construction work for approximately two (2) years. Unfortunately, and moved by the wrong reasons, Mr. Mulero-Rivera left his job and ended up in the streets mingling with the wrong individuals. Mr. Mulero-Rivera regrets his decision and acknowledges leaving his job at the carwash was the worst choice he has ever made.

In his own words, Mr. Mulero-Rivera had it all. He had modest jobs that paid the bills. He was in a relationship with the love of his life, Ms. Adini Garcia. He had a wonderful relationship with his family, who supported him. Mr. Mulero-Rivera was proud of his life and had goals ahead of him. He wanted to complete studying and improve his craft as a barber. But his life changed. Persuaded and influenced by the wrong individuals for a better and easier path to money and comfort, Mr. Mulero-Rivera left his job and his dreams, choosing the easy way out. Now, confined for approximately one (1) year, Mr. Mulero-Rivera awaits his first sentence and conviction.

Mr. Mulero-Rivera learned his lesson. He accepted responsibility for his actions and is paying the consequences. If this Honorable Court accepts his request, Mr. Mulero-Rivera will spend 18 months in prison. 18 months to reflect about what he did, the repercussions of his actions, the suffering he has caused

his family, the severity of his offense and most important; what could have happened if those police officers had not arrested him on August 15, 2018. A day that changed his life for good. Mr. Mulero-Rivera understands that having an illegal firearm is a serious offense. The criminality in Puerto Rico is rampant and illegal firearms are the cause of most of the murders. Mr. Mulero-Rivera understands having an illegal firearm puts, not only other people's lives in danger, but also his life. He understands it was wrong and unnecessary. Mr. Mulero-Rivera also understands his family is suffering for his actions. He is a changed man, that still needs rehabilitation and is confident that with the help of the Bureau of Prisons and the United States Probation Office, he will not recidivate and will be a productive member of society. As stated by him during the Pre-Sentence interview, "I need the supervised release term and it will help me".

Mr. Mulero-Rivera was raised by both of his parents. However, they separated when he was approximately 12 years old. This event had a traumatic effect on Mr. Mulero-Rivera. He dropped out of school and never returned. He was rebellious. He moved in with his father, who was an alcoholic. After a while living with his father, Mr. Mulero-Rivera returned home with mom. Now, due to his father's addiction, Mr. Mulero-Rivera has not seen him for over three (3) years. Fortunately, Mr. Mulero-Rivera has his family support throughout this event. They are desperately waiting for his release. Mr. Mulero-Rivera's mother, Ms. Néida Rivera, describes her son as a quiet and tranquil person, who likes to help people. She believes negative peers influenced him. His consensual partner

is also dreadfully awaiting his release. They have been together for over four (4) years.

Mr. Mulero-Rivera wants to take advantage of this unfortunate event. He wants to study and work during his imprisonment term. Currently, Mr. Mulero-Rivera works as a barber at the Metropolitan Detention Center in Guaynabo, Puerto Rico. He would also like to enroll in barber and English courses and complete a General Equivalency Development (G.E.D.) degree. After his release, Mr. Mulero-Rivera wants to return to work at the carwash and further his studies. He plans to move in with his sister, who supports him and always counsels and guides him through the right path.

III. United States Sentencing Guidelines (USSG)

The USSG indicate a Base Offense Level of 18, since the offense involved a machinegun.² However, since Mr. Mr. Mulero-Rivera clearly demonstrated acceptance of responsibility for his offense and timely notified authorities of his intention to enter a plea of guilty, a three (3) level decrease is warranted for a Total Offense Level of 15.³ With a Total Offense Level of 15 and a Criminal History Category of I, the USSG recommend a sentence of *18-24 months of imprisonment*.⁴ The Pre-Sentence Report reflects the same calculations. The government did not reported any inaccuracies or discrepancies to the PSR.

² USSG §2K2.1(a)(5)

³ USSG §3E1.1(a) & (b)

⁴ See Part B of the Pre-Sentence Report at Docket No. 53 for Mr. Mulero-Rivera's Criminal History.

IV. Why a sentence of 18 months of imprisonment is sufficient and not greater than necessary?

Mr. Mulero-Rivera is a young man, who committed this offense out of immaturity, bad influences and lack of judgment. However, 18 months of imprisonment is a sentence that will address the 3553 factors. Mr. Mulero-Rivera is a 23-year-old first offender. He accepted responsibility for his actions and is suffering the consequences. Mr. Mulero-Rivera learned his lesson. He is now a changed person. He has the right tools to move forward. He has his family support, reachable goals and a transformed mind. Mr. Mulero-Rivera wants nothing to do with anything that relates to drugs or firearms. The time he has been imprisoned, and the time he has remaining, will be enough for him to reflect upon what he did and to deter any future criminal actions. Instead of complaining about his imprisonment and supervised release term, Mr. Mulero-Rivera is embracing and seeing it as an opportunity to rehabilitate and move forward.

Mr. Mulero-Rivera still has a bright future ahead of him. What he could do in 24 months of imprisonment, which would be the higher end of the applicable Guidelines range, he can do in 18 months. Mr. Mulero-Rivera already started working in prison, which help his process of rehabilitation by modestly working. He already has reachable goals in mind and is willing to receive any help and/or treatments provided by the United States Probation Office. If sentenced to 18 months of imprisonment, Mr. Mulero-Rivera will still face an

additional three (3) years of supervised release term, which also addresses the 3553 factors. As conditions of his supervised release, Mr. Mulero-Rivera must work, study and comply with a curfew that may include electronic monitoring device. The fear of having his sentence revoked will also deter any future criminal activities by the defendant and will decrease any risk to the community. Mr. Mulero-Rivera understands a sentence of 18 months of imprisonment, followed by three (3) years of supervised release, is a just punishment that also reflects the seriousness of the offense and promotes respect for the law.

Bearing in mind the factors to be considered in imposing a sentence under 18 U.S.C. § 3553 and the information stated above, Mr. Mulero-Rivera respectfully requests this Honorable Court to sentence him to the lower end of the applicable Guidelines range for a sentence of 18 months of imprisonment, followed by a supervised release term of three (3) years, a sentence sufficient but not greater than necessary to serve the goals of sentencing.

WHEREFORE, Mr. Mulero-Rivera respectfully requests this Honorable Court to note this sentencing memorandum and sentence him to 18 months of imprisonment, followed by three (3) years of supervised release.

I HEREBY CERTIFY that on this date I electronically filed the present motion with the Clerk of the Court using the CM/ECF system, which will send electronic notification of said filing to all parties of record.

Respectfully submitted.

In San Juan, Puerto Rico, this 9th day of July, 2018.

Eric A. Vos
Federal Public Defender
District of Puerto Rico

S/ Edwin A. Mora Rolland
Edwin A. Mora Rolland
Assistant Federal Public Defender
USDC-PR 304603
241 F.D. Roosevelt Avenue
Floor 3
San Juan, Puerto Rico 00918-2305
(787) 281-4922 Ext. 262
edwin_mora@fd.org